

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

METLAKATLA INDIAN COMMUNITY, )  
 )  
Plaintiff, )  
 )  
vs. ) CASE NO. 5:20-cv-00008-SLG  
 )  
MICHAEL J. DUNLEAVY, et al., )  
 )  
Defendants. )  
 )

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PARTIAL TRANSCRIPT OF MOTION HEARING RE MOTION FOR SUMMARY  
JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT

**BEFORE THE HONORABLE SHARON L. GLEASON, DISTRICT JUDGE**

February 15, 2024

11:09 a.m. - 12:14 p.m.

Juneau, Alaska

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**SONJA L. REEVES**

**Registered Diplomat Reporter**

**Certified Realtime Reporter**

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Transcript Produced from the Stenographic Record

1   **FOR THE UNITED STATES OF AMERICA:**  
2       U.S. Department of Justice  
3       Environmental and Natural Resources Division  
4       BY:   DARON CARREIRO  
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1 (Call to Order of the Court at 11:09 a.m.)

2 (Proceedings took place that are not included in this  
3 partial transcript, after which, proceedings continued as  
4 follows:)

5 THE COURT: I have it right here. Well, then, might  
6 as well segue to the question I sent out earlier this week.

7 How do you interpret that paragraph responding to  
8 Alaska's second argument?

9 MR. ORMAN: Your Honor is one step ahead of me. I  
10 appreciate that.

11 So when you look at how this case -- how the decision  
12 was framed, it walks through the *Winters* doctrine and analyzes  
13 the *Winters* doctrine, then notes where it's been applied, the  
14 one case that's ever applied the *Winters* doctrine to implied  
15 off-reservation fishing rights.

16 Then, as the Court is analyzing, in my opinion -- and  
17 Your Honor has read the briefing here -- that paragraph that  
18 you sent, to me, is extremely important because it recognizes  
19 in the language here that, "Alaska argues that the Community is  
20 foreclosed from claiming an implied right to off-reservation  
21 fishing because Metlakatlangs had no aboriginal rights to  
22 preserve."

23 So specifically addressing the State saying this tribe  
24 doesn't have aboriginal rights that could have been preserved,  
25 noting then the *U.S. v. Michigan* framework right there,

1 flashing back to it.

2 Then the next sentence, "However, as discussed above,  
3 Metlakatlans and their Tsimshian ancestors asserted and  
4 exercised the right to fish in these waters since time  
5 immemorial." To me, that is expressly aboriginal rights  
6 language. Again, we're going back to *U.S. v. Michigan*.

7 And then, "In passing the 1891 Act, Congress confirmed  
8 the continued existence of the right." And to me, the next  
9 language that becomes really important is -- or not even next  
10 language; it was previously in this decision, key cite 1045,  
11 "The Ninth Circuit held that the 1891 Act preserved for the  
12 Community and its members an implied right." Preserved.

13 If this wasn't about aboriginal rights, wasn't about  
14 aboriginal rights being extinguished, the continued existence  
15 of an aboriginal right, the language of "preserved" wouldn't be  
16 applicable; *U.S. v. Michigan* wouldn't have needed to be cited.  
17 It could have been an entirely different rule, but the Court  
18 specifically walked through the *Winters* doctrine, recognized  
19 the only case that's found in implied off-reservation fishing  
20 right outside of the Palmer Stevens treaty cases, and then  
21 basically seems to be pegging off each one of the four elements  
22 of the *U.S. v. Michigan* -- and I know counsel doesn't like it  
23 when I say "test," -- but the four *U.S. v. Michigan* things that  
24 it identified in that case as instructive and dispositive.

25 (Requested excerpt concluded, proceedings continued.)

## 1 CERTIFICATE

2 I, Sonja L. Reeves, Federal Official Court Reporter in and  
3 for the United States District Court of the District of Alaska,  
4 do hereby certify that the foregoing transcript is a true and  
5 accurate transcript from the original stenographic record in  
6 the above-entitled matter and that the transcript page format  
7 is in conformance with the regulations of the Judicial  
8 Conference of the United States.

9 Dated this 5th day of June, 2024.

10 /s/ Sonja L. Reeves  
11 SONJA L. REEVES, RDR-CRR  
12 FEDERAL OFFICIAL COURT REPORTER  
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